

**MINUTES OF THE OPEN SESSION  
OF THE RHODE ISLAND ETHICS COMMISSION**

**August 18, 2009**

**The Rhode Island Ethics Commission held its 12th meeting of 2009 at 9:00 a.m. at the Rhode Island Ethics Commission conference room, located at 40 Fountain Street, 8th Floor, Providence, Rhode Island, on Tuesday, August 18, 2009, pursuant to the notice published at the Commission Headquarters and at the State House Library.**

**The following Commissioners were present:**

**Barbara R. Binder, Chair Frederick K. Butler\***

**Ross Cheit, Vice Chair Edward A. Magro**

**J. William W. Harsch, Secretary John D. Lynch, Jr.**

**Also present were William J. Conley, Jr., Commission Legal Counsel; Kent A. Willever, Commission Executive Director; Katherine D'Arezzo, Senior Staff Attorney; Staff Attorneys Jason Gramitt, Dianne L. Leyden and Esme DeVault; and Commission Investigators Peter J. Mancini and Gary V. Petrarca.**

**At 9:04 a.m., the Chair opened the meeting. The first order of business was approval of minutes of the Open Session held on July 21, 2009. Upon motion made by Commissioner Magro and duly**

**seconded by Commissioner Lynch, it was unanimously**

**VOTED: To approve minutes of the Open Session held on July 21, 2009.**

**ABSTENTION: J. William W. Harsch.**

**The next order of business was that of advisory opinions. The advisory opinions were based on draft advisory opinions prepared by the Commission Staff for review by the Commission and were scheduled as items on the Open Session Agenda for this date. The first advisory opinion was that of Patrick Luther, Chief Plumbing Investigator for the Rhode Island Department of Labor and Training. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was present. \*Commissioner Butler arrived at approximately 9:10 a.m.**

**The Petitioner represented that he does not exercise any supervisory authority, notwithstanding his job description. He informed that his division only licenses individuals as plumbers in Rhode Island and that he acts as a liaison to the Board of Examiners. He stated that the members of the Board of Examiners are allowed to use their licenses in Rhode Island. He advised that any complaint against a competitor filed with his division solely relates to whether the individual is properly licensed; he has no capacity to handle code violations. The Petitioner stated his belief that, as long as everyone is properly**

licensed, he should be able to operate a business along with all other properly licensed individuals. He indicated that he has been licensed for plumbing and pipefitting since 1986.

In the event that the Commission believes there is a conflict with him being a plumbing investigator, the Petitioner asked that it rule separately on his ability to have a pipefitting business installing boilers on his own time. He stated that these are tough economic times, his wife has been laid off, and he is trying to support four children using the licenses he worked years to obtain. In response to Commissioner Cheit, the Petitioner advised that he is licensed in Connecticut, but he does not know anyone there. In further response, he indicated that he knows people in Rhode Island based upon his eight and a half years of state service. Commissioner Cheit suggested that people might believe that they need to come to him because he works for the state.

Chair Binder sought clarification as to whether the Petitioner's job description includes supervising and participating in investigations, as noted in the draft opinion. The Petitioner replied that it turns out that he does not supervise, but only handles consumer complaints to check to see if a person is properly licensed. In response to Chair Binder, Staff Attorney DeVault stated that the Petitioner submitted the referenced job description along with his request letter. In response to Commissioner Lynch, the Petitioner informed that investigations take place after a person is found to be not licensed. He stated that

he would show up at a site and talk to an individual regarding whether or not they are properly licensed. Commissioner Lynch inquired if the Petitioner exercises any discretion when he does a show-up investigation. The Petitioner explained that if one person is licensed and another is not he would issue a citation to the license-holder. In further response, he clarified that the only discretion he has is to make a determination as to whether the individual is licensed or not.

Commissioner Harsch inquired if the Petitioner initiates his own complaints. The Petitioner replied that he does stop at job sites unannounced. He clarified that he is out looking for individuals who are not licensed. In response to Commissioner Harsch, Staff Attorney DeVault stated that she does not believe the Petitioner's representations change the analysis of the draft opinion, particularly given that he stated that he has the discretion to do a show-up investigation. Commissioner Harsch noted that the Petitioner mentioned other groups involved in the regulatory process which might be performing private work. Staff Attorney DeVault replied that it has not been investigated and whether these individuals perhaps may be in violation of the Code themselves is a separate matter. Commissioner Harsch inquired whether the Staff intends to pursue the information presented by the Petitioner. Chair Binder suggested that the matter be brought up under New Business.

In response to Chair Binder, the Petitioner stated that he works for

the Division of Professional Regulation and he is the only Chief Plumbing Investigator for the state. In response to Commissioner Cheit, the Petitioner indicated that a consumer with a complaint regarding shoddy work could complain to the municipality. He also stated that one could complain to the State Building Code Commissioner's Office, which is not within the Department of Labor and Training. Commissioner Cheit commented that the issue now seems narrower than the initial representation, in particular that the Petitioner is regulating competitors who are not licensed. He indicated that the Petitioner is not in a position to do anything with legal, licensed competitors. He stated that he would understand the conflict if the Petitioner were able to put a legitimate competitor out of business or steal his business.

Staff Attorney DeVault stated that the Petitioner can regulate a licensed competitor who has both licensed and unlicensed persons working for him. In response to Commissioner Cheit, the Petitioner advised that any plumber working on a site has to be licensed or registered as an apprentice working under a licensed individual. He informed that a cease and desist order would issue to a company employing an unlicensed apprentice. Commissioner Cheit noted that he supports the Staff recommendation, as the Petitioner does get to decide whether or not to drop in on a site to make an inquiry. In response to Commissioner Harsch, the Petitioner indicated that he did consult with a friend who is an attorney before seeking the opinion and the attorney informed him that he did not see a conflict

since it is a level playing field because everyone is licensed. In response to Commissioner Harsch, Staff Attorney DeVault informed that the Petitioner brought the prior advisory opinion on this issue to the Staff's attention.

Staff Attorney DeVault indicated that the Petitioner did not separate the two issues of plumbing and pipefitting in his request letter and she would need more information regarding pipefitting. Commissioner Cheit stated that the Petitioner would have to submit a separate request on that issue. He noted that this is an odd circumstance where the job description seems to be much broader than the job. The Petitioner advised that there is a separate license, program and exam for pipefitting. He provided the example of an individual who provides boiler service but is not a plumber. Upon motion made by Commissioner Cheit and duly seconded by Commissioner Magro, it was unanimously

**VOTED:** To issue an advisory opinion, attached hereto, to Patrick Luther, Chief Plumbing Investigator for the Rhode Island Department of Labor and Training.

The next advisory opinion was that of Jeffery S. Booker, a member of the Smithfield Land Trust. Staff Attorney DeVault advised that the Petitioner has withdrawn his request for an opinion.

The next advisory opinion was that of Joseph Knight, a member of

**the Pawtucket School Committee. Staff Attorney DeVault presented the Commission Staff recommendation. The Petitioner was not present. Upon motion made by Commissioner Butler and duly seconded by Commissioner Magro, it was unanimously**

**VOTED: To issue an advisory opinion, attached hereto, to Joseph Knight, a member of the Pawtucket School Committee.**

**The next order of business was public comment on and adoption of proposed General Commission Advisory (GCA) 2009-1: Nepotism. Staff Attorney DeVault informed that the Commission received no written comment on the proposal. She noted that the only change to the prior draft presented involved a minor change in an example set forth on page three. Upon motion made by Commissioner Harsch and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To adopt (2nd vote) GCA 2009-1: Nepotism.**

**The next order of business was the withdrawal of Amended GCA 6 (Salary Raises for Public Officials). Staff Attorney DeVault noted that this older GCA, which had been distributed in the members' packets, would be replaced by the new proposal. Upon motion made by Commissioner Magro and duly seconded by Commission Lynch, it was unanimously**

**VOTED: To withdraw (1st vote) the Amended GCA 6 (Salary Raises for**

**Public Officials).**

**The next order of business was Commission consideration of proposed GCA 2009-2: Public Officials' Actions Involving their own Stipends, Salaries, Compensation or Benefits. Staff Attorney DeVault advised that adoption of the proposal would require two votes, one of which could occur today and the other of which would take place after opportunity for comment at the September 22nd meeting. Commissioner Harsch inquired whether, as the Staff works through the process of updating the GCAs, it believes there are regulations or laws that might need adjustment. Staff Attorney DeVault replied that she has not come across that situation yet, but there might be areas that need updating. She noted that Regulation 5004 sufficiently addresses the nepotism prohibitions, and in the instant matters the general prohibitions of 5(a) and 5(d) address the issue. Commissioner Harsch suggested that in conducting its review the Staff should look at whether related regulations could use updating also. Upon motion made by Commission Harsch and duly seconded by Commissioner Butler, it was unanimously**

**VOTED: To adopt (1st vote) GCA 2009-2: Public Officials' Actions Involving their own Stipends, Salaries, Compensation or Benefits.**

**The next order of business was discussion regarding "Core legislative acts." Staff Attorney Gramitt explained that the Staff memorandum had been distributed at the last meeting but was not**



noticed on the agenda for discussion. Chair Binder indicated that the issue seems pretty clear to her. Commissioner Cheit stated that at the time of the Decision he thought there could be different ways of conceptualizing core legislative activities, but now he cannot see how it ever would become an issue for the Commission because that type of complaint would not be filed with the Commission. Staff Attorney Gramitt noted that the Commission would have the opportunity at the initial determination stage to decide whether a complaint would go forward. Commissioner Cheit inquired about a complaint alleging activities peripheral to core legislative acts. Staff Attorney Gramitt replied that such a complaint would proceed if the Commission authorized investigation, but it would be subject to challenge at any time.

Commissioner Cheit wondered whether there could be a conflict of interest complaint alleging legislative activity that would not constitute a core legislative function. Staff Attorney Gramitt noted that bribery is still illegal. Commissioner Cheit indicated that he was thinking of agreeing to introduce a bill, for example, not a quid pro quo arrangement. Staff Attorney Gramitt explained that without the quid pro quo aspect there would be no violation of the Code. Commissioner Cheit commented that if a legislator promises to introduce a bill and does so, one cannot introduce evidence that it was done because it is the core legislative act. Staff Attorney Gramitt indicated that the agreement itself is sufficient to constitute a violation.

Executive Director Willever advised that, in the event that such a complaint is filed, the first part in the decisional process will be for him to determine whether it is even accepted. He noted that financial disclosure becomes more important now as a tool to convey to the public what conflict might be present that perhaps the Commission cannot act on. He added that the effort to deceive or fail to disclose would be a violation of the financial disclosure statute on which the Commission could go forward. In response to Commissioner Cheit, Staff Attorney Gramitt stated the he cannot imagine a way the acceptance of a gift would be deemed to be a core legislative act.

The next order of business was discussion regarding the Complainant's role in the complaint process. Staff Attorney Gramitt provided a recap of the issue, which has been before the Commission previously for consideration. He informed that the issue arose from Staff concerns regarding the Complainant getting an advance copy of the settlement agreement and being able to attend the hearing, given that, from a prosecution perspective, settlements are universally confidential. He stated that in a prior matter a Complainant released the document to the press prior to the hearing to approve the settlement. He stated that the Staff would suggest not requiring advance release, particularly given that the Commission can reject settlements and the statements contained within them are admissions.

**Staff Attorney Gramitt informed that the Commission previously solicited public comment on the issue, but a workshop on the issue was postponed during the pendency of the Irons litigation. He advised that four options had been presented for consideration but had not been noticed for public comment. Chair Binder instructed the Staff to notice the options for public comment.**

**The next order of business was that of the Director's Report. Executive Director Willever reported that there are eleven complaints and four advisory opinions pending, and one formal APRA request has been granted since the last meeting. He advised that Staff Attorney Gramitt recently presented an ethics seminar as part of the Attorney General's Open Government Summit, which had over seven hundred attendees and received positive feedback. He noted that there were many questions regarding the Irons case and whether legislative immunity extends to municipal legislative bodies.**

**Deputy Chief Investigator Peter J. Mancini informed the Commission of the Staff's annual Operation Compliance effort in financial disclosure. He reported that on March 17, 2009, the Commission mailed 3,679 Statements to those required to file for calendar year 2008, and 2, 418 Statements were filed by the April 24th deadline for a compliance rate of 65%. He stated that on June 12th over seven hundred reminder letters were sent to those who had failed to file, and by the June 30th deadline the compliance rate was up to 90%. Investigator Mancini indicated that he contacted the municipal clerks**

and solicitors regarding those who had still failed to file, as voluntary compliance is the ultimate goal. He reported that the compliance rate was up to 95% by August 7th.

Investigator Mancini advised that the Staff initiated ten non-filing complaints on August 14th, which included complaints against city council members, school committee members and fire chiefs. He stated that 100% of state elected officials have filed. He indicated that the Staff is in the process of planning for more non-filing complaints, including those against local zoning and planning board members who failed to file the 2008 Statement. Chair Binder complimented the Staff on this year's compliance rate. In response to Commission Butler, Investigator Mancini stated that he has found the clerks' lists to be accurate, but the Staff always verifies information before filing complaints.

The next order of business was New Business. Chair Binder commented on dicta in the Irons Decision which states that Irons presented a formidable argument regarding the right to a jury trial. She requested that the issue be discussed at the next meeting to make sure that the Commission is giving respondents the due process required. Commissioner Harsch referenced the earlier advisory opinion issued to Patrick Luther and the Petitioner's representation that others are engaged in the same conduct. Staff Attorney Gramitt stated his belief that the Petitioner was speaking of municipal inspectors, who have been told by the Commission that

they may practice in other jurisdictions. Commissioner Harsch requested that the Staff verify the Petitioner's representation and, if the representation related to state officials, asked whether the Staff would take any action. Director Willever indicated that Staff will address the issue, determine if it needs further review and report back at the next meeting.

At 10:08 a.m., upon motion made by Commissioner Magro and duly seconded by Commissioner Butler, it was unanimously

**VOTED:** To go into Executive Session pursuant to R.I. Gen. Laws § 42-46-5(a)(2) and (4), to wit:

a.) Motion to approve minutes of Executive Session held on July 21, 2009.

b.) Status Update:

Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission, Superior Court C.A. No. 08-7325.

c.) Collection Actions Update:

(1) In re: Louis Aponte,  
Complaint No. NF2005-3

- (2) In re: John Celona,  
Complaint Nos. 2003-9, 2004-4 & 2004-8**
- (3) In re: Aisha Abdullah-Odiase,  
Complaint Nos. 2001-34 & NF2002-1**
- (4) In re: Patrick T. McDonald,  
Complaint Nos. 2001-41 & NF2002-13**
- (5) In re: Brenda Gaynor,  
Complaint No. 2001-32**
- (6) In re: Robert Ritacco,  
Complaint No. 97-40**
- (7) In re: J. Michael Levesque,  
Complaint Nos. 92-60 & 92-61**
- (8) In re: Robert D. Hallal,  
Complaint No. 89-42**
- (9) In re: Sarah Murphy,  
Complaint No. NF85-36**
- (10) In re: Thomas Feeney,  
Complaint No. NF84-23**

**(11) In re: Barbara Edler,  
Complaint No. NF80-13**

**(12) In re: Michael Kelly,  
Complaint No. NF78-21**

**(13) In re: Michael Sepe,  
Complaint No. 78-29**

**d.) Motion to return to Open Session.**

**The Commission returned to Open Session at 10:36 a.m. The next order of business was a motion to seal minutes of the Executive Session held on August 18, 2009. Upon motion made by Commissioner Butler and duly seconded by Commissioner Harsch, it was unanimously**

**VOTED: To seal minutes of the Executive Session held on August 18, 2009.**

**Chair Binder reported that the Commission took the following actions in Executive Session: 1) approved minutes of the Executive Session held on July 21, 2009; 2) received a status update on Joseph S. Larisa, Jr. v. Rhode Island Ethics Commission; and 3) took action on the thirteen enumerated collection matters.**

**At 10:38 a.m., upon motion made by Commissioner Butler and duly seconded by Commissioner Cheit, it was unanimously**

**VOTED: To adjourn.**

**Respectfully submitted,**

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**J. William W. Harsch**

**Secretary**